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DOCKET NO.: 4191

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
IN THE MATTER OF THE APPLICATION FOR PATENT

OF: Michael BISCHOF et al.

SERIAL NO.: 09/890,613

FILED: July 31, 2001

FOR: Arrangement of a Heating Layer
for a High-Temperature Gas Sensor

| ART UNIT: 2832

| EX.: K. D. Easthom

| Conf. No.: 4612 FAX RECEIVED

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November 25, 2002

TRANSMITTED HERewith IS A RESPONSE TO THE ELECTION REQUIREMENT OF OCTOBER 25, 2002 IN THE ABOVE IDENTIFIED PATENT APPLICATION COMPRISING 5 PAGES. A LETTER TO THE OFFICIAL DRAFTSMAN AND A HAND-MARKED FILE COPY OF FIGS. 1A, 1B, 1C, 2A, 2B, and 3 ARE ENCLOSED.

NO ADDITIONAL CLAIM FEE IS REQUIRED, AS SHOWN BELOW.

CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NO. PREVIOUSLY PAID FOR	PRESENT EXTRA	SMALL ENTITY	OR	LARGE ENTITY	ADDITIONAL FEE
TOTAL: 12	MINUS: 20	0	X=\$		X=\$0	=\$ 0
INDEP: 1	MINUS: 3	0	X=\$		X=\$0	=\$ 0
					TOTAL ADDITION. FEE DUE:	=\$ 0

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I hereby certify that this correspondence with all indicated enclosures is being transmitted by telefax to (703) 872-9318 on the date indicated below, and is addressed to: Assistant Commissioner for Patents, Washington, D. C. 20231.

Walter F. Fasse 11/25/02
Name: Walter F. Fasse - Date: November 25, 2002

11/25/2002 17:51 207-862-4681

FASSE PATENT ATTYS

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OF: Michael BISCHOF et al.

SERIAL NO.: 09/890,613

FILED: July 31, 2001

FOR: Arrangement of a Heating Layer
for a High-Temperature Gas Sensor

| ART UNIT: 2832

| EX.: K. D. Easthom

| Conf. No.: 46 **PAX RECEIVED**

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November 25, 2002

RESPONSE TO THE ELECTION REQUIREMENT OF OCTOBER 25, 2002
INCLUDING AN ATTACHED COVER SHEET WITH CERTIFICATE OF TELEFAX
TRANSMISSION

Dear Sir:

- 1) The Examiner's attention is directed to the enclosed file copies of drawing sheets 1 and 2 showing proposed corrections in Figs. 1 to 3. Particularly, Figs. 1A, 1B, 1C, 2A, 2B, and 3 have each been labeled as "PRIOR ART" in conformance with the original written description. Approval of this proposed correction is respectfully requested. Proper formal drawings incorporating the corrections will then be filed.
- 2) The Examiner's attention is directed to applicants' Information Disclosure Statement filed on July 31, 2001 together with this application. The Examiner is respectfully requested to consider

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the references, and to return an initialed, signed and dated acknowledgment copy of the corresponding Form PTO-1449 of July 31, 2002, together with the next official communication.

- 3) In response to the Election Requirement applicants hereby elect Species 3 related to Figs. 7 to 10.
- 4) The claims reading on the elected Species 3 are all present claims 1 to 8 and 13 to 16. Among those claims, claims 1 to 8, 13 and 16 also generically read on the non-elected Species 2 related to Figs. 5A to 6, while claims 1 to 4 and 16 also generically read on the non-elected Species 1 related to Fig. 4A. Additionally, while the feature of claim 5 is not illustrated in Fig. 4A, it is clear from the written description that this feature could also be incorporated in the embodiment of this Species 1 (see e.g. page 8, lines 13 to 15; page 11, lines 21 to 24; etc.). Thus, it is submitted that claim 5 can also be regarded as reading on non-elected Species 1.
- 5) In the event a generic claim is ultimately found allowable, the Examiner is requested to rejoin, consider and allow any claims depending from such an allowable generic claim, including dependent claims directed to non-elected Species.
- 6) The Election Requirement is respectfully traversed, because the standards of unity of invention under PCT Rule 13.1 have not been properly applied.

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According to the PCT unity requirements, all of the present claims 1 to 8 and 13 to 16 share unity of invention, because they are linked to form a single, general inventive concept, and particularly they all share the special technical features defined in independent claim 1. All of the features of the dependent claims are subordinate to and inextricably linked to the primary inventive features of independent claim 1.

Under 37 C.F.R. §1.475 and M.P.E.P. §1850 and §1893.03(d), the same standards for unity of invention shall be applied during the International Phase and during the National Phase. M.P.E.P. §1850 thus reiterates the requirements of unity of invention as set forth in the PCT Rules and Administrative Instructions. Particularly, M.P.E.P. §1850 expressly states that unity of invention has to be considered in the first place only in relation to the independent claims and not the dependent claims. In an application including independent and dependent claims, the initial determination of unity of invention must find that the there is unity among an independent claim and all claims dependent therefrom. In this regard, see especially SA "Independent and Dependent Claims" of M.P.E.P. §1850 on page 1800-61 of the August, 2001 8th Edition of the M.P.E.P.

It is especially instructive to consider the PCT Administrative Instructions, Annex B, Part II, "Examples Concerning Unity of Invention", Example 12. These Administrative Instructions are included as an Appendix of the M.P.E.P. at page AI-59 of the August, 2001 8th Edition of the M.P.E.P. Example 12 is as follows:

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"Claim 1: a display with features A + B.

Claim 2: a display according to claim 1 with additional feature C.

Claim 3: a display with features A + B with additional feature D."

Based on these claims, the Example then instructs: "Unity exists between claims 1, 2 and 3. The special technical feature common to all the claims is features A + B".

The present situation, i.e. the evaluation of unity of the present independent claim 1 and dependent claims 2 to 8 and 13 to 16, is exactly like Example 12 of the PCT Administrative Instructions. Although there are distinctions between the features "C" and "D" of various dependent claims, the features "A + B" of the independent claim 1 are the special technical feature common to all of the claims.

- 7) At this point of the examination process, claim 1 has not been rejected for lack of novelty or inventiveness over the prior art.

The Examiner has generally asserted that claim 1 reads on the admitted prior art of present Figs. 1C and 2A. It is respectfully submitted, however, that a close reading of claim 1 will show that claim 1 is patentably distinguishable from the admitted prior art.

Claim 1 recites "different partial heating resistances between the supply line part (2) and the sensor tip (10)", whereby the magnitude of a respective partial heating resistance is dependent on the spacing distance of the respective partial heating resistance to the sensor tip. In the admitted prior art,

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the entire meandering portion of the conductor path between the "long straight part" at the sensor tip has a uniform or consistent resistance value.

The claims will be clarified to any extent necessary, and the patentability of the claims over the prior art will be discussed in detail, once a fully supported prior art rejection of any claims has been made (if applicable).

The present claims are literal translations of the PCT International claims. The applicants wish to point out that the admitted prior art has not been applied against the novelty or inventiveness of the corresponding claims in any other foreign examination procedure, in other counterpart foreign applications.

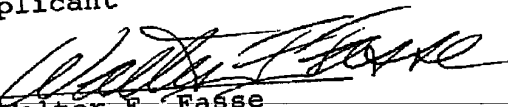
In any event, these matters will be addressed to the extent necessary after receipt of a first Office Action on the merits.

- 8) Favorable consideration and allowance of the application, including all present claims 1 to 8 and 13 to 16, are respectfully requested.

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Respectfully submitted, NOV 25 2002


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Encls.:
Letter to Draftsman,
hand-marked copy of Figs.
1A, 1B, 1C, 2A, 2B, and 3

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